



PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 58501.00033
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed Name _____	Application Number: 09/818,940 Filed: March 28, 2001 First Named Inventor: Leana GOLUBCHIK, et al. Art Unit: 2137 Examiner: Davis, Zachary A.

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.


I am the

- ☐ Applicant/Inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under
37 CFR 3.73(b) is enclosed

☒ Attorney or agent of record.
Registration No. 51,091

☐ Attorney or agent acting under 37 CFR 1.34.
Reg. No. is acting under 37 CFR 1.34 _____



Signature

David E. Brown

Typed or printed name

(703) 720-7800

Telephone number

July 14, 2006

Date

NOTE: Signatures of all of the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Leana GOLUBCHIK, et al.

Art Unit: 2137

Application No.: 09/818,940

Examiner: Zachary A. Davis

Filed: March 28, 2001

Attorney Dkt. No.: 58501.00033

For: SCALABLE WIDE-AREA UPLOAD SYSTEM AND METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

July 14, 2006

Sir:

In accordance with the Pre-Appeal Brief Conference Pilot Program guidelines set forth in the July 12, 2005 Official Gazette Notice, Applicants hereby submit this Pre-Appeal Brief Request for Review of the final rejections of claims 23-28 and objections of claims 5 and 12 in the above identified application. Claims 13-16 and 29 were allowed and claims 1-12, 17-28, and 30-32 were finally rejected in the Office Action dated March 6, 2006. Applicants filed a Response to the Final Office Action on June 5, 2006, and the U.S. Patent and Trademark Office issued an Advisory Action dated June 19, 2006 maintaining the final rejections of claims 23-28, objecting to claims 5 and 12, and allowing claims 1-4, 6-11, 13-22, and 29-32. Applicants hereby appeal these rejections and submit this Pre-Appeal Brief Request for Review.

The cited reference fails to disclose or suggest all of the limitations of any of the pending claims.

The Office Action rejected claims 23-28 under 35 U.S.C. 103(a) as being obvious over US Patent No. 6,665,861 to Faris et al., in view of US Patent No. 6,138,158 to Boyle. The Office Action took the position that Faris disclosed all of the features of these claims except for the feature that the message is an indication that the proxy server is holding data for the destination server to upload. The Office Action asserted that Boyle disclosed this feature.

Applicants respectfully submit that the cited references taken individually or in combination, fail to disclose or suggest all of the features of the above claims.

Claims 23, from which claims 24-28 depend, is directed to a method of preventing upload overloads of data from a plurality of clients at different locations within a network to a common destination server in the network. A common destination server is provided in a network, the common destination server set up to receive data from a plurality of clients. A plurality of upload proxy servers are provided remote from the common destination server, and each client sending data, which is intended for the common destination server, to at least a corresponding one of the upload proxy servers. A message is sent, which is smaller in size than the data of a client, to the common destination server to indicate that the common destination server needs to check the corresponding one of the upload proxy servers, and upload data from the corresponding one of the upload proxy servers. Further, the common destination server uploads the data of a client at some time after the message such that a plurality of clients trying to send data to the common destination server at essentially the same time is less likely to overload the common destination server and its connection to the network.

Applicants submit that cited references fail to disclose or suggest all of the features of the above claims.

Faris is directed to an internet-based system for enabling a time-constrained competition among a plurality of participants over the internet. Faris discloses a plurality of Global Synchronization Unit-enabled client machines, each with a Global Synchronization Unit (GSU). Further, at column 24 lines 34-38, Faris discloses that a client machine is connected to a global synchronization unit (GSU) and at column 36 lines 54-58 discloses that the GSU (alleged authenticator) "generates digitally signed time and space stamp for the response." Thus, Faris teaches that the GSU is a part of the client device. The Office Action admits that Faris is deficient in that Faris fails to disclose or suggest the feature of a message that is an indication that the proxy server is holding data for the destination server to upload, as recited in claim 23. However, the Office Action alleges that Boyle makes up for this deficiency.

Applicants As a result, the Office Action failed to establish *prima facie* obviousness because the cited references fail to disclose or suggest all of the features recited in claims 23-28. This failure constitutes clear error in the Office Action.

To establish *prima facie* obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicants' disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

Applicants respectfully submit that the cited references taken individually or in combination fail to disclose or suggest all of the features recited in claim 23. Specifically, Boyle fails to cure the admitted deficiencies of Faris.

As stated above, the Office Action admits that Faris fails to disclose or suggest the feature of a message that is an indication that the proxy server is holding data for the destination server to upload, as recited in claim 23, and that Boyle discloses this feature. Boyle is directed to a method and system of pushing and pulling data using wideband and narrowband transport systems. In Boyle, several two-way interactive devices are nodes in a distributed network. Therefore, the devices can access hypermedia or hierarchic layers of information that is stored in server devices on the network. When one or more pages of information are updated, rather than sending the entire updated information to users of the devices that subscribe to the updated information through the network, Boyle describes sending a notification to a proxy server that forwards the notification to the users using a messaging system via a low cost narrowband channel. Upon receiving the notification, the users can fetch the updates when needed through a wideband channel (See Boyle column 6 line 57 – column 7 line 16).

As stated above, claim 23 recites at least in part, sending a message, which is smaller in size than the data of a client, to the common destination server to indicate that the corresponding one of the at least one proxy server is holding data to be uploaded by the common destination server.

On the other hand, Boyle, at column 7 lines 13-16, discloses that the link server device 114 (alleged proxy server), receives a notification or a piece of electronic message from a web server device ("Web server device 202 pushes a notification or a piece of electronic message to link server device 114 when there is a change or update to the information subscribed by mobile device 106."). Thus, Boyle discloses that the link server 114 (alleged proxy server) receives the indication, and not the common destination server as recited in claim 23.


The Office Action asserted that Boyle disclosed this feature because Boyle allegedly discloses that the link server then sends the notification to the destination device (i.e., a mobile/client device). The Office Action further admits that a destination device such as a mobile/client device is not explicitly a destination server. The Office Action thus, appears to state that because the notification is sent to a device, that this feature reads on the destination server that is clearly recited in claim 23. Applicants respectfully submit that the mere fact that Boyle allegedly discloses sending the notification to a mobile/client device is not reasonably analogous to the destination server, recited in claim 23. It is well-known in the art, that destination servers as recited in claim 23, and a mobile/client device as described in Boyle, perform two different functions. Therefore, Boyle fails to cure the admitted deficiencies of Faris. Accordingly, the cited references fail to disclose or suggest all of the features recited in claim 23.

Applicants further submit that because claims 24-28 depend from claim 23, these claims are allowable at least for the same reasons as claim 23. Further, Applicants submit that the cited references fail to disclose or suggest all of the features recited in these dependent claims. Therefore, the Office Action failed to establish prima facie obviousness in rejecting claims 23-28. Applicants submit that this failure constitutes clear error in the Office Action.

Based at least on the above, Applicants respectfully submit that the cited references taken individually or in combination, fail to disclose or suggest all of the features recited in claims 23-28.

Reconsideration and withdrawal of the rejections, in view of the clear errors in the Office Action, is respectfully requested. In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



David E. Brown
Registration No. 51,091

Customer No. 32294
SQUIRE, SANDERS & DEMPSEY LLP
14TH Floor
8000 Towers Crescent Drive
Tysons Corner, Virginia 22182-2700
Telephone: 703-720-7800
Fax: 703-720-7802

DEB:jkm

Enclosures: Form PTO/SB/33
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